

**In re: MITCHELL STANLEY AND ROBERT ESTELLE.
AQ - 09-0111.
Default Order
Filed November 10, 2009.**

AQ – Default.

Thomas Bolick for APHIS.
Respondent Pro se.
Default decision by Jill S. Clifton, Administrative law Judge.

Decision Summary

1. I decide that Mitchell Stanley and Robert Estelle, Respondents, each of whom is an owner/shipper of horses (9 C.F.R. § 88.1), failed to comply with the Commercial Transportation of Equine for Slaughter Act (7 U.S.C. § 1901 note) and the Regulations promulgated thereunder (9 C.F.R. § 88.1 *et seq.*), when they commercially transported horses for slaughter on September 13, 2005, to BelTex Corporation in Ft. Worth, Texas. I decide further that **\$5,200.00** in total civil penalties (9 C.F.R. § 88.6) for remedial purposes for Respondent Mitchell Stanley's failures to comply and for Respondent Robert Estelle's failures to comply, is reasonable, appropriate, justified, necessary, proportionate, and not excessive. Respondent Mitchell Stanley and Respondent Robert Estelle are jointly and severally liable to pay the \$5,200.00.

Parties and Counsel

2. The Complainant is the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (frequently herein "APHIS" or "Complainant"). APHIS is represented by Thomas N. Bolick, Esq., Office of the General Counsel (Regulatory Division), United States Department of Agriculture, South Building Room 2319, 1400 Independence Ave. SW, Washington, D.C. 20250.
3. Each of the Respondents, Mitchell Stanley and Robert Estelle (frequently herein "Respondents", "Respondent Stanley" or "Respondent Estelle"), failed to appear.

Procedural History

4. APHIS's Motions for Adoption of Proposed Default Decision and Order (filed July 28, 2009 as to Respondent Robert Estelle) (filed August 25, 2009 as to Respondent Mitchell Stanley) are before me.
5. Respondent Robert Estelle was served with a copy of the Motion for Default Decision and a copy of the Proposed Default Decision and Order on August 26, 2009, and failed to respond.
6. Respondent Mitchell Stanley was sent a copy of the Motion for Default Decision and a copy of the Proposed Default Decision and Order on August 26, 2009, by certified mailing which went unclaimed and was returned to the Hearing Clerk on September 22, 2009.
7. Regarding service of the Complaint, which was filed on May 12, 2009, Respondent Robert Estelle was served on June 5, 2009, when he personally signed to receive the certified mailing, return receipt requested. [What Respondent Estelle was served with, included a copy of the Complaint, a copy of the Hearing Clerk's notice letter, and a copy of the Rules of Practice. *See* 7 C.F.R. §1.130 *et seq.*] Respondent Estelle was informed in the Complaint and the letter accompanying the Complaint that an answer should be filed with the Hearing Clerk within 20 days after service of the complaint, and that failure to file an answer within 20 days after service of the complaint constitutes an admission of the allegations in the complaint and waiver of a hearing.
8. Regarding service of the Complaint, which was filed on May 12, 2009, Respondent Mitchell Stanley was served on June 9, 2009, when the Hearing Clerk re-mailed the Complaint by regular mail, after the certified mailing was unclaimed (in accordance with 7 C.F.R. § 1.147(c)(1)). [What Respondent Stanley was served with, included a copy of the Complaint, a copy of the Hearing Clerk's notice letter, and a copy of the Rules of Practice. *See* 7 C.F.R. §1.130 *et seq.*] Respondent Stanley was informed in the Complaint and the Hearing Clerk's notice letter accompanying the Complaint that an answer should be filed with the Hearing Clerk within 20 days after service of the complaint, and that failure to file an answer within 20 days after service of the complaint constitutes an admission of the allegations in the complaint and waiver of a hearing.
9. Neither Respondent Estelle nor Respondent Stanley ever did file an answer to the Complaint, and they are in default, pursuant to 7 C.F.R. § 1.136(c).
10. Failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the

complaint. 7 C.F.R. §1.136(c). Failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139. Accordingly, the material facts alleged in the Complaint, which are admitted by the Respondents' default, are adopted and set forth herein as Findings of Fact. This Decision and Order, therefore, is issued pursuant to section 1.139 of the Rules of Practice. 7 C.F.R. § 1.139. [*See also* 7 C.F.R. § 380.1 *et seq.*]

Findings of Fact and Conclusions

11. Respondent Mitchell Stanley and Respondent Robert Estelle were, at all times material herein, owners/shippers of horses within the meaning of 9 C.F.R. § 88.1, commercially transporting horses to slaughter.

12. The Secretary of Agriculture has jurisdiction over both Respondents and the subject matter involved herein.

13. Respondent Mitchell Stanley is an individual whose business address is in Hamburg, Arkansas, and he handles more than 20 horses per year in interstate commerce.

14. Respondent Robert Estelle is an individual whose business address is in Fountain Hill, Arkansas, and he handles more than 20 horses per year in interstate commerce.

15. On or about September 13, 2005, the two Respondents shipped 17 horses in commercial transportation for slaughter to BelTex Corporation in Ft. Worth, Texas and:

(a) They did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: a bay quarterhorse mare in the shipment bearing USDA back tag # USCE 0405 had a pre-existing condition in its right front leg that rendered it lame and unable to bear weight on that leg, but this condition was not listed as a pre-existing injury or other unusual condition that might cause the horse to have special handling needs, in violation of 9 C.F.R. § 88.4(a)(3)(viii).

(b) A bay quarterhorse mare in the shipment bearing USDA back tag # USCE 0405 had a pre-existing condition in its right front leg that rendered it lame and unable to bear weight on that leg, but Respondents shipped it with the other horses anyway. By transporting it in this manner, Respondents failed to handle the lame horse as expeditiously and carefully as possible in a manner that did not cause it unnecessary discomfort, stress, physical harm or trauma, in violation of 9 C.F.R. § 88.4(c).

16. During the commercial shipment of horses for slaughter detailed in paragraph 15, Respondent Mitchell Stanley and Respondent Robert Estelle violated the Commercial Transportation of Equine for Slaughter

Act (7 U.S.C. § 1901 note) and the Regulations promulgated thereunder (9 C.F.R. § 88 *et seq.*).

17. The maximum civil penalty per violation is \$5,000.00, and each equine transported in violation of the regulations will be considered a separate violation. Civil penalties totaling \$5,200.00 are warranted and appropriate, reasonable, justified, necessary, proportionate, and not excessive, for remedial purposes, for Respondent Mitchell Stanley and Respondent Robert Estelle's violations, in accordance with 9 C.F.R. § 88.6 and based on APHIS's unopposed Motions filed July 28, 2009 and August 25, 2009.

Order

18. The Respondents Mitchell Stanley and Robert Estelle, each of whom is an owner/shipper of horses, are assessed jointly and severally, a civil penalty in the amount of **\$5,200.00** (five thousand two hundred dollars), which shall be paid by certified check(s), cashier's check(s), or money order(s), made payable to the order of "**Treasurer of the United States.**"

19. The Respondents' obligation to pay the \$5,200.00 in civil penalties may be collected from both or only one of the Respondents; and once \$5,200.00 in civil penalties total has been collected, neither Respondent will be required to pay additional civil penalties from this case.

20. The Respondents shall reference **AQ 09-0111** on their certified check(s), cashier's check(s), or money order(s). Payments of the civil penalties shall be sent to, and received by, APHIS, at the following address:

United States Department of Agriculture
APHIS, Accounts Receivable
P.O. Box 3334
Minneapolis, Minnesota 55403

within sixty (60) days from the effective date of this Order. The provisions of this Order shall be effective on the tenth day after this Decision and Order becomes final. *See* paragraph 21 to determine when this Decision and Order becomes final. The Respondents shall forward to APHIS at the foregoing address any change in mailing address or other contact information.

Finality

21. This Decision and Order shall be final without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see attached Appendix A).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties.
Done at Washington, D.C.

APPENDIX A

7 C.F.R.:

TITLE 7—-AGRICULTURE

SUBTITLE A—-OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—-ADMINISTRATIVE REGULATIONS

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SUBPART H—-RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding

evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether

oral or on brief,
shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]